

REMARKS

Claims 1-11, 18-20, and 41-48 are pending in the application. Applicant requests reconsideration of the application and issuance of a notice of allowance.

Date for Responding to the Office Action

PAIR indicates that the Office Action was originally mailed January 16, 2007, but was returned to the USPTO on January 25, 2007 as undelivered.¹ On May 11, 2007, the undersigned Attorney requested a Status Check on the application because Applicant had not received any communication from the USPTO since filing an RCE on October 20, 2006.² The Transaction History and Image File Wrapper on PAIR do not show any activity or attempt by the USPTO to remail the Office Action between January 26, 2007 and May 29, 2007.³ And Applicant's counsel in this matter (to whom correspondence related to this application is to be sent) did not receive the Office Action until May 31, 2007.⁴ Further, the Office Action received by Applicant's counsel on May 31, 2007 was not redacted to reflect the date the USPTO remailed it.⁵

As of June 4, 2007, PAIR did not indicate that the Office Action was remailed.⁶ On June 6, 2007, Scott Slaby, Applicant's associate counsel for this matter, spoke with the Examiner about the delay in receiving the Office Action. The Examiner stated that she would look into the matter and have the date for responding to the Office Action reset to the date it was remailed. Applicant and Applicant's attorneys thank the Examiner for her time and assistance in this matter.

The Bibliographic Data page on Public PAIR now indicates the status of the application as having a non-final action mailed and a status date of May 29, 2007.⁷ Additionally, the Transaction History page on Public PAIR indicates a

¹ See Attachment A.

² See Attachment B.

³ See, e.g., Attachment A.

⁴ See Attachment C, which indicates the day that the Action was received and docketed by Applicant's outside counsel in this matter.

⁵ See MPEP § 710.06 (stating that where it becomes necessary to remail any action, the action should be correspondingly redated)

⁶ See Attachment D.

⁷ See Attachment E.

"Letter Restarting Period for Response" and "Mail Notice of Restarted Response Period" on May 29, 2007.⁸ These documents do not appear in the Image File Wrapper on Public PAIR, and Applicant has not received any documents having either of these headings.

Despite the fact that the Office Action was not redacted, Applicant submits that the period for replying to the Office Action should run from May 29, 2007, i.e., the date on which the action was remailed.⁹ Therefore, Applicant submits that this response is being filed within the shortened statutory period of three months and does not believe that any extension of time is required or that any additional fees are due.

In the event, however, that an extension of time is needed to make the filing of this Response timely, and as indicated on the first page of this Response, please consider this Response as requesting a petition for the required extension and charge the fee to Deposit Account No. 18-0988 (under Docket Number AVERP3447USA).

Rejections Under 35 U.S.C. § 102

A. Rejections based on van Driesten references

The Examiner rejected claims 1-22, 18-20, and 41-48 under 35 U.S.C. § 102(b) as being anticipated by WO 00/46316 (WO '316) or EP 026 215 to van Driesten et al. (Collectively "the van Driesten references".) Applicant respectfully traverses these rejections.

1. Claim 1, 41, and 43

The Examiner contends that van Driesten WO '316 discloses an adhesive article comprising a face construct 11, a release layer 13, a pressure sensitive adhesive (permanent) layer 14, a polyester layer 15, a pressure-sensitive adhesive layer 12, a non-PSA layer 2, a release layer 32, a liner layer 37, a pressure sensitive adhesive layer 36, a release layer 33 and a liner layer 31.

⁸ See Attachment A.

⁹ This is the date, according to PAIR, that the action was remailed (See Attachment A.) See also, MPEP § 707.13 (stating that for returned Office Actions, the period running against the application begins with the date the action is remailed)

The Examiner further notes that layers 11, 31 and 37 may be made of paper, a plastic film of a polyolefin such as polyethylene and polypropylene, or a polyester such as polyethylene terephthalate (citing claims 19-21; page 15, second paragraph). The PSA adhesive and the non-PSA adhesive can be hot melt adhesive and rubber based or acrylic based (citing page 9, lines 21-23; page 11, lines 24-37; and page 19, lines 23-36).

The Examiner acknowledges that the van Driesten references do not teach a moisture resistant substrate, or an adhesive that (i) is removable and resealable in the presence of moisture from food packaging environments, and/or (ii) has a Moist Loop Test result as required by the claims. But, the Examiner contends that the laminate in the van Driesten references would have all the properties claimed since the references teach the same components in the same laminate.

A reference fails to anticipate a claim unless the reference discloses each and every element as set forth in the claim. (MPEP § 2131.) The reference must show the identical invention in as complete detail as is contained in the claim.

The van Driesten references neither teach nor suggest that the PSA adhesive layers are removable and resealable under any conditions. In fact, van Driesten WO '316 discloses that the PSA layers 12 and 36 are composed of pressure sensitive adhesives that are permanent adhesives. (See, e.g., page 19, lines 23-25, cited by the Examiner and page 22 line 24-27.) Accordingly, Applicant respectfully submits that the PSAs described by van Driesten are not and cannot be comprised of the same components since the adhesives used in the present invention are removable and resealable whereas van Driesten's adhesives are permanent. The adhesives used by van Driesten would not "inherently have all the same properties as presently claimed".

Additionally, the Examiner has not met the burden of establishing that the PSA or non-PSA in van Driesten inherently possesses the properties recited in independent claims 1, 41, and 43. To establish inherency, the Examiner bears the initial burden to provide a basis in fact and/or technical reasoning to support a position that the allegedly inherent feature necessarily flows from the cited

reference. (MPEP § 2112(IV).) The Examiner must show that the missing descriptive matter (i) is necessarily present in the thing described in the reference, and (ii) would be recognized by persons skilled in the art. (*Id.*) Further, inherency cannot be established by mere possibilities or probabilities. (*Id.*) The fact that a characteristic may be present is not sufficient to establish inherency. (*Id.*)

The Examiner has simply stated that because the adhesives have similar components, e.g., rubber or acrylic components, they necessarily possess the recited properties. The Examiner, however, has not provided any evidence or technical reasoning to support this position. In particular, the Examiner has not provided any evidence of why any adhesive with a certain resin component necessarily has a Moist Loop Test result as recited in the claims.

Applicant submits that WO '316 demonstrates that an adhesive does not necessarily possesses a certain property simply because it contains a particular resin component. The van Driesten references note that the pressure sensitive adhesives (PSA) and non-PSA compositions may comprise one or more polymers such as rubbers or poly(meth)acrylates. (See WO '316, page 9, lines 28-27; page 11, lines 30-35, and page 19, lines 25-26.) That is, the PSA and non-PSA may contain the same type of resin components. Despite containing the same type of resin components, the PSA and non-PSA components have different properties. For example, van Driesten discloses that the non-PSA and PSA have different adhesive properties; namely, the PSA is an adhesive for providing a permanent bond, and the non-PSA is non-sticking. (See WO '316, page 10, line 37 through page 11, line 7; page 14, lines 21-22.) The van Driesten references also disclose that PSA's and non-PSA's have different storage modulus properties. (See WO '316, page 10, lines 3-10.) Thus, in view of the above evidence, a person skilled in the art would not recognize that an adhesive necessarily possesses a particular property simply because it contains a particular component such as, for example, a particular resin component. The fact that an adhesive with the resin components disclosed by van Driesten could possibly have the properties recited in the claims is not sufficient to establish inherency.

For at least the reasons discussed above, Applicant respectfully submits that independent claims 1, 41, and 43, or any claims dependent therefrom, are not anticipated by van Driesten, either expressly or inherently. Applicant respectfully requests that the rejection be withdrawn.

2. Claims 18-20, 42, 44, and 46-48

Claims 18-20, 42, 44, and 46-48 depend from one of claims 1, 41, or 43, and are patentable over van Driesten for the reasons discussed above.

Claims 18-20, 42, 44, and 46-48, however, also recite that the adhesive further comprises (c) at least one permanent adhesive covering a second portion of the first surface on the substrate. The van Driesten references teach that its structure may have layers of permanent PSA or layers of non-PSA but fail to teach or suggest a structure with a removable and resealable adhesive covering a first portion of the substrate and at least one permanent adhesive covering a second portion of the substrate. Therefore, the van Driesten references fail to teach or disclose the identical invention in as complete detail as is contained in these claims. Thus, van Driesten fails to anticipate claims 18-20, 42, 44, and 46-48. Applicant respectfully requests that the rejection of these claims be withdrawn.

B. Rejections based on Navarini

The Examiner rejected claims 1-8 and 18 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,056,141 to Navarini et al. Applicant respectfully traverses this rejection.

The Examiner argues that Navarini discloses an acrylic based adhesive layer and, therefore, the adhesive inherently possesses the properties recited in claim 1.

Applicant submits that the Examiner has not met the burden of establishing inherency. Navarini discloses that its adhesive is acrylic based and repositionable but does not provide any other information about the adhesive. The Examiner has not provided any evidence to demonstrate that the repositionable adhesive in Navarini's structure would necessarily have a moist

Loop Test result as recited in claim 1. Further, as discussed above, Applicant has shown that a person skilled in the art would not recognize an adhesive as inherently possessing a certain property, let alone the properties recited in the present claims, simply because it includes a particular resin component.

Additionally, Navarini does not teach or suggest an article that further comprises (c) at least one permanent adhesive covering a second portion of the first surface of the substrate as recited in claim 18. Navarini only teaches a layer of repositionable adhesive on the surface of opening edge 7.

For at least these reasons, Applicant respectfully requests that the rejection of claims 1-8 and 18 based on Navarini be withdrawn.

C. Rejections based on Bane

The Examiner rejected claims 1-4, 18, and 41-48 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,366,087 to Bane. Applicant respectfully traverses this rejection.

The Examiner acknowledges that Bane fails to teach or suggest the properties recited in independent claims 1, 41, and 43, but argues that Bane teaches the same components and, therefore, such properties would be inherent in the adhesives in Bane's article.

Contrary to the Examiner's argument, Bane does not teach the same components in the laminate. Blane discloses a substrate 11 having a line of weakness 13, a permanent adhesive 14 on one side of the line of weakness and a repositionable adhesive 15 on the other side of the line of weakness. Bane does not disclose any particular classes of repositionable adhesive or any components for such adhesives. Bane merely discloses that the permanent and repositionable adhesives may be selected "from a wide variety of conventional permanent and repositionable adhesives" and provides CLEANTAC from Moore Business Forms, Inc., as a commercial example of a repositionable adhesive. Bane does not disclose any other feature or component of this adhesive.

The Examiner has not provided any evidence or technical reasoning why the adhesive in Bane necessarily has a Moist Loop Test as recited in the claims or how a person skilled in the art would recognize that such compositions

necessarily have such a property. As discussed above, van Driesten shows that a composition does not necessarily possess a property simply because it contains a particular component such as a resin component. Applicant respectfully requests that the rejection be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests a timely issuance of a Notice of Allowance for claims 1-11, 18-20, and 41-48.

In the event any fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 18-0988 under Attorney Docket No. AVERP3447USA.

Respectfully submitted,

RENNER, OTTO, BOISSELLE & SKLAR, LLP

By /Heidi A. Boehlefeld/
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Attachments: Attachment A – E

10/796,758	Reusable closures for packages and methods of making and using the same	07-03-2007::10:45:09
Transaction History		
Date	Transaction Description	
06-14-2007	Electronic Information Disclosure Statement	
06-14-2007	Information Disclosure Statement (IDS) Filed	
05-29-2007	Mail Notice of Restarted Response Period	
05-29-2007	Letter Restarting Period for Response (i.e. Letter re: References)	
05-11-2007	Miscellaneous Incoming Letter	
01-16-2007	Mail Non-Final Rejection	
01-08-2007	Non-Final Rejection	
10-26-2006	Date Forwarded to Examiner	
10-26-2006	Date Forwarded to Examiner	
10-20-2006	Request for Continued Examination (RCE)	
10-26-2006	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)	
10-20-2006	Request for Extension of Time - Granted	
08-04-2006	Mail Miscellaneous Communication to Applicant	
08-03-2006	Miscellaneous Communication to Applicant - No Action Count	
07-25-2006	Improper Request for Continued Examination	
07-25-2006	Workflow - Request for RCE - Begin	
04-25-2006	Mail Final Rejection (PTOL - 326)	
04-22-2006	Final Rejection	
03-23-2006	Date Forwarded to Examiner	
03-16-2006	Response after Non-Final Action	
02-07-2006	Mail Non-Final Rejection	
02-06-2006	Non-Final Rejection	
12-08-2005	Information Disclosure Statement considered	
09-29-2005	Information Disclosure Statement considered	
12-08-2005	Information Disclosure Statement (IDS) Filed	
12-08-2005	Information Disclosure Statement (IDS) Filed	
12-14-2005	Date Forwarded to Examiner	
12-14-2005	Date Forwarded to Examiner	
12-08-2005	Request for Continued Examination (RCE)	
12-14-2005	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)	
12-08-2005	Request for Extension of Time - Granted	
12-08-2005	Workflow - Request for RCE - Begin	
10-27-2005	Mail Advisory Action (PTOL - 303)	
10-25-2005	Advisory Action (PTOL-303)	
09-29-2005	Reference capture on IDS	
09-29-2005	Information Disclosure Statement (IDS) Filed	
09-29-2005	Information Disclosure Statement (IDS) Filed	
09-08-2005	Date Forwarded to Examiner	
09-06-2005	Amendment after Final Rejection	
07-13-2005	Mail Final Rejection (PTOL - 326)	
07-11-2005	Final Rejection	
04-11-2005	Reference capture on IDS	

Attachment A
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04-11-2005 Information Disclosure Statement (IDS) Filed
04-11-2005 Information Disclosure Statement (IDS) Filed
05-05-2005 Date Forwarded to Examiner
04-28-2005 Response after Non-Final Action
02-10-2005 Mail Non-Final Rejection
02-07-2005 Non-Final Rejection
11-30-2004 Date Forwarded to Examiner
11-19-2004 Response after Non-Final Action
11-19-2004 Workflow incoming amendment IFW
08-26-2004 Mail Non-Final Rejection
08-23-2004 Non-Final Rejection
07-30-2004 Case Docketed to Examiner In GAU
07-30-2004 IFW TSS Processing by Tech Center Complete
05-28-2004 Reference capture on IDS
05-28-2004 Information Disclosure Statement (IDS) Filed
05-28-2004 Information Disclosure Statement (IDS) Filed
06-24-2004 Application Return from OIPE
06-24-2004 Application Return TO OIPE
06-24-2004 Application Dispatched from OIPE
06-24-2004 Application Is Now Complete
06-14-2004 Additional Application Filing Fees
06-14-2004 A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic
05-28-2004 Notice Mailed--Application Incomplete--Filing Date Assigned
04-06-2004 Cleared by OIPE CSR
03-30-2004 IFW Scan & PACR Auto Security Review
03-09-2004 Initial Exam Team nn

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/Denise G. Bachtel/
Denise G. Bachtel

May 11, 2007
Date

Docket No: AVERP3447USA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: :
Sjoerd Johannes van Driesten : Group Art Unit: 1711
Serial No: 10/796,758 : Examiner: Thao Tran
Filed: March 9, 2004 : Confirmation No: 4363
For: **REUSABLE CLOSURES FOR PACKAGES AND
METHODS OF MAKING AND USING THE SAME**

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

STATUS CHECK

Sir:

Applicants electronically filed a response to the Communication mailed from the Patent Office on October 20, 2006. To date, Applicants have not received a response in this case.

Consequently, Applicants respectfully request notification as to when we can expect to receive a response to our correspondence dated October 20, 2006.

Respectfully submitted,
RENNER, OTTO, BOISSELLE & SKLAR, LLP

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Attachment C
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UNITED STATES PATENT AND TRADEMARK OFFICE

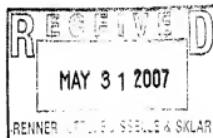
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,758	03/09/2004	Sjoerd Johannes van Driesten	AVERP3447USA	4363
7590	01/16/2007			
Heidi A. Boehlefeld Renner, Otto, Boisselle & Sklar, LLP Nineteenth Floor 1621 Euclid Avenue Cleveland, OH 44115-2191			EXAMINER TRAN, THAO T	
			ART UNIT 1711	PAPER NUMBER

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.



Attachment D
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10/796,758	Reusable closures for packages and methods of making and using the same	06-04-2007::12:15:19
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This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click Start Download.

Available Documents

	Document Description	Document Category	Page Count
05-11-2007	Request for status of Application	PROSECUTION	1
05-11-2007	Status Letter Mailed to Applicant	PROSECUTION	2
01-25-2007	Mail returned to USPTO as undelivered	PROSECUTION	9
01-16-2007	Non-Final Rejection	PROSECUTION	8
01-16-2007	Index of Claims	PROSECUTION	1
10-20-2006	Amendment Submitted/Entered with Filing of CPA/RCE	PROSECUTION	1
10-20-2006	Claims	PROSECUTION	4
10-20-2006	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	7
10-20-2006	Extension of Time	PROSECUTION	1
10-20-2006	Fee Worksheet (PTO-06)	PROSECUTION	2
10-20-2006	Status Letter Mailed to Applicant	PROSECUTION	2
10-20-2006	Miscellaneous Incoming Letter	PROSECUTION	4
10-20-2006	Fee Worksheet (PTO-06)	PROSECUTION	1
10-20-2006	Index of Claims	PROSECUTION	1
08-04-2006	Miscellaneous Action with SSP	PROSECUTION	2
07-25-2006	Request for Continued Examination (RCE)	PROSECUTION	1
07-25-2006	Fee Worksheet (PTO-06)	PROSECUTION	2
07-25-2006	Status Letter Mailed to Applicant	PROSECUTION	2
04-25-2006	Final Rejection	PROSECUTION	8
04-25-2006	Index of Claims	PROSECUTION	1
03-16-2006	Amendment - After Non-Final Rejection	PROSECUTION	1
03-16-2006	Claims	PROSECUTION	4
03-16-2006	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	6
03-16-2006	Fee Worksheet (PTO-06)	PROSECUTION	1
02-07-2006	Non-Final Rejection	PROSECUTION	7
02-07-2006	List of References cited by applicant and considered by examiner	PRIOR ART	1
02-07-2006	List of references cited by examiner	PRIOR ART	1
02-07-2006	Foreign Reference	PRIOR ART	16
02-07-2006	Index of Claims	PROSECUTION	1
02-07-2006	Bibliographic Data Sheet	PROSECUTION	1
12-08-2005	Amendment Submitted/Entered with Filing of CPA/RCE	PROSECUTION	1
12-08-2005	Claims	PROSECUTION	4
12-08-2005	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	10
12-08-2005	Request for Continued Examination (RCE)	PROSECUTION	1
12-08-2005	Extension of Time	PROSECUTION	1
12-08-2005	Information Disclosure Statement (IDS) Filed	PROSECUTION	3
12-08-2005	NPL Documents	PRIOR ART	2
12-08-2005	NPL Documents	PRIOR ART	2
12-08-2005	NPL Documents	PRIOR ART	2
12-08-2005	NPL Documents	PRIOR ART	2
12-08-2005	Fee Worksheet (PTO-06)	PROSECUTION	1
12-08-2005	Claims Worksheet (PTO-2022)	PROSECUTION	1
10-27-2005	Advisory Action (PTOL-303)	PROSECUTION	3
10-27-2005	List of References cited by applicant and considered by examiner	PRIOR ART	1

Attachment D
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10-27-2005	Amendment After Final or under 37CFR 1.312, initiated by the examiner.	PROSECUTION	1
09-29-2005	Information Disclosure Statement (IDS) Filed	PROSECUTION	3
09-06-2005	Amendment After Final	PROSECUTION	1
09-06-2005	Claims	PROSECUTION	7
09-06-2005	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	6
09-06-2005	Fee Worksheet (PTO-06)	PROSECUTION	1
07-13-2005	Final Rejection	PROSECUTION	10
07-13-2005	List of References cited by applicant and considered by examiner	PRIOR ART	1
04-28-2005	Amendment - After Non-Final Rejection	PROSECUTION	1
04-28-2005	Claims	PROSECUTION	9
04-28-2005	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	7
04-28-2005	NPL Documents	PRIOR ART	3
04-28-2005	NPL Documents	PRIOR ART	4
04-28-2005	NPL Documents	PRIOR ART	4
04-28-2005	Fee Worksheet (PTO-06)	PROSECUTION	1
04-11-2005	Information Disclosure Statement (IDS) Filed	PROSECUTION	3
02-10-2005	Non-Final Rejection	PROSECUTION	9
02-10-2005	Index of Claims	PROSECUTION	1
11-19-2004	Amendment - After Non-Final Rejection	PROSECUTION	1
11-19-2004	Claims	PROSECUTION	9
11-19-2004	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	6
11-19-2004	Fee Worksheet (PTO-06)	PROSECUTION	1
08-26-2004	Non-Final Rejection	PROSECUTION	8
08-26-2004	List of References cited by applicant and considered by examiner	PRIOR ART	8
08-26-2004	List of references cited by examiner	PRIOR ART	1
08-26-2004	Bibliographic Data Sheet	PROSECUTION	1
08-26-2004	Index of Claims	PROSECUTION	1
08-26-2004	Search information including classification, databases and other search related notes	PROSECUTION	1
08-22-2004	Examiner's search strategy and results	PROSECUTION	2
06-14-2004	Oath or Declaration filed	PROSECUTION	2
05-28-2004	Information Disclosure Statement (IDS) Filed	PROSECUTION	10
05-28-2004	Foreign Reference	PRIOR ART	8
05-28-2004	Foreign Reference	PRIOR ART	56
05-28-2004	NPL Documents	PRIOR ART	4
05-28-2004	NPL Documents	PRIOR ART	6
05-28-2004	Pre-Exam Formalities Notice	PROSECUTION	2
03-09-2004	Transmittal of New Application	PROSECUTION	2
03-09-2004	Specification	PROSECUTION	32
03-09-2004	Claims	PROSECUTION	7
03-09-2004	Abstract	PROSECUTION	1
03-09-2004	Drawings	PROSECUTION	4
03-09-2004	Fee Worksheet (PTO-06)	PROSECUTION	1
03-09-2004	Fee Worksheet (PTO-06)	PROSECUTION	1

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Attachment E
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10/796,758	Reusable closures for packages and methods of making and using the same	07-09-2007::08:34:18
Bibliographic Data		
Application Number:	10/796,758	Customer Number: -
Filing or 371 (c) Date:	03-09-2004	Status: Non Final Action Mailed
Application Type:	Utility	Status Date: 05-29-2007
Examiner Name:	TRAN, THAO T	Location: ELECTRONIC
Group Art Unit:	1711	Location Date: -
Confirmation Number:	4363	Earliest Publication No: US 2004-0191459 A1
Attorney Docket Number:	AVERP3447USA	Earliest Publication Date: 09-30-2004
Class / Subclass:	428/343	Patent Number: -
First Named Inventor:	Sjoerd Driesten , Bodegraven, (NL)	Issue Date of Patent: -
Title of Invention:	Reusable closures for packages and methods of making and using the same	

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